Before the Federal Communications Commission Washington, DC 20554

In the Matter of)	
)	
Requests for Waiver and Review of)	
Decisions of the)	
Universal Service Administrator by)	
•)	
Abbotsford School District)	File Nos. SLD-875372, et al.
Abbotsford, Wisconsin, et al.)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
	ORDER	

Adopted: December 12, 2012 Released: December 12, 2012

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Consistent with precedent, we address 91 requests from petitioners seeking review of decisions made by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program). The petitioners are seeking waivers of the FCC Form 471 application filing window deadline under the E-rate program. We grant 58 requests and deny 33 requests.

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¹ See Requests for Review of the Decisions of the Universal Service Administrator by Academy of Math and Science, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-487009, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259-60, paras. 8 & 9 (2010) (Academy of Math and Science Order) (finding special circumstances exist to justify granting waiver requests where, for example, petitioners filed their FCC Forms 471 within 14 days after the FCC Form 471 filing window deadline; filed their Forms 471 on time, but failed to timely file their certifications; or filed within 30 days despite medical issues); Requests for Review of the Decisions of the Universal Service Administrator by Anderson Elementary School, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-789495, et al., CC Docket No. 02-6, Order, 27 FCC Rcd 5319, 5319-20, para. 2 (Wireline Comp. Bur. 2012) (treating late-filed item 21 attachments like late-filed certifications); Requests for Waiver and Review of the Decisions of the Universal Service Administrator by Acorn Public Library, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-637819, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15474, 15478, para. 7 (Wireline Comp. Bur. 2008) (finding special circumstances exist to justify granting waiver requests where petitioners filed their FCC Forms 471 late due to circumstances beyond their control).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ The requests for waiver and review are listed in Appendices A-D. Section 54.507(c) of the Commission's rules provides for E-rate funds to be made available on a first-come-first-served basis, but requires USAC to implement an initial funding window that treats all applicants filing within that window as if their applications were simultaneously received. 47 C.F.R. § 54.507(c). Although some petitioners did not explicitly request a waiver of the FCC Form 471 application filing window deadline, we treat their requests for review as requests for waiver because, in each case, USAC denied their funding requests because their FCC Form 471 applications were submitted after the relevant filing window deadline.

⁴ See Appendices A-D.

- 2. Based on the facts and circumstances of these specific cases, we find that good cause exists to grant the 58 appeals listed in Appendices A-C with respect to the applications listed therein. We grant the 39 waiver requests listed in Appendix A, because those petitioners' applications were filed within 14 days of the close of the filing window. We grant the 18 waiver requests listed in Appendix B, because each of those petitioners' applications was submitted 1) on time but for their certifications or item 21 attachments; 2) within a reasonable period of the filing window's close despite the person responsible for submitting the form suffering a serious illness; or 3) within a reasonable period of the filing window's close despite other delays beyond the applicant's control. We grant the appeal listed in Appendix C, because we find that the application identified therein was filed within the filing window.
- 3. Consistent with precedent, we also waive section 54.720(a) of the Commission's rules, which requires applicants to seek review of a USAC decision within 60 days, for two applicants. One applicant, High School for Recording Arts, submitted its appeals to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decision. The other applicant, Office of Enterprise Technology, did not miss the initial filing deadline with USAC, and therefore it is in the public interest to waive the deadline for its late-filed appeal to the Commission.
- 4. We deny the 33 appeals listed in Appendix D because we find that, with respect to those applications, the 33 petitioners have failed to present special circumstances justifying waivers of the Commission's rules.¹¹
- 5. At this time, we find no evidence of waste, fraud and abuse in the record with respect to the petitioners for which we grant relief. We therefore remand the underlying applications listed in Appendices A-D to USAC for further action consistent with this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

⁵ See Appendices A, B, and C. Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); Northeast Cellular, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. NetworkIP, LLC v. FCC, 548 F.3d 116, 125-128 (D.C. Cir. 2008); Northeast Cellular, 897 F.2d at 1166.

⁶ See Appendix A.

⁷ See Appendix B.

⁸ See Appendix C.

⁹ Requests for Review and/or Requests for Waiver of Decisions of the Universal Service Administrator by Animas School District 6, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-427902, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 16903, 16905, para. 4 (Wireline Comp. Bur. 2011) (granting petitioners waivers of our filing deadline for appeals because they submitted their appeals to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decision, or their late-filed appeal would never have been necessary absent an error on the part of USAC).

¹⁰ 47 C.F.R. § 54.720(a).

¹¹ See Appendix D; 47 C.F.R. § 1.3; Academy of Math and Science Order, 25 FCC Rcd at 9261, para. 13 (denying requests for waiver when the petitioners failed to present special circumstances justifying a waiver of section 54.507(c) of the Commission's rules).

- 6. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the requests for review or requests for waiver filed by the petitioners listed in Appendices A-C ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.
- 7. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that section 54.507(c) of the Commission's rules, 47 C.F.R. § 54.507(c), IS WAIVED for the petitioners listed in Appendices A and B to the limited extent provided herein.
- 8. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that section 54.720(a) of the Commission's rules, 47 C.F.R. § 54.720(a), IS WAIVED for High School for Recording Arts and Office of Enterprise Technology.
- 9. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the requests for review or requests for waiver filed by the petitioners listed in Appendix D ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader Chief Telecommunications Access Policy Division Wireline Competition Bureau

APPENDIX A

Requests Granted (FCC Form 471 Applications Filed Within 14 Days of the Close of the Filing Window)

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Abbotsford School District Abbotsford, WI	875372, 875377, 875379, 875380, 875381, 875382	2012	Nov. 19, 2012
Alden Public Library Alden, IA	844766	2012	Nov. 19, 2012
Archdiocese of Detroit Schools Detroit, MI	875201	2012	Nov. 26, 2012
Chapel Hill Christian School Cuyahoga Falls, OH	875145	2012	Dec. 3, 2012
Christ the King School Indianapolis, IN	875338	2012	Dec. 3, 2012
Countryside Christian School Gainesville, FL	875137	2012	Dec. 3, 2012
Developmental Disabilities Institute Smithtown, NY	875268, 875276	2012	Nov. 26, 2012
The Dow Leadership Institute Cleveland, OH	865132, 865138	2012	Nov. 27, 2012
East End Community Heritage School Cincinnati, OH	865510	2012	Nov. 21, 2012
Entrepreneurship Preparatory School – Woodland Hills Cleveland, OH	875375	2012	Sept. 27, 2012
Escuela Hispana Montessori New York, NY	875128, 875133, 875136, 875139	2012	Nov. 26, 2012
First Baptist Head Start Pittsburg, CA	875406	2012	Nov. 14, 2012
First Place Academy Trenton, FL	875141	2012	Dec. 3, 2012
Forks of Salmon School District Forks of Salmon, CA	875590	2012	Nov. 27, 2012
Georgetown School District Georgetown, OH	875366	2012	Oct. 31, 2012
Grand Prairie Elementary School Centralia, IL	875312	2012	Oct. 10, 2012
Hayden Elementary School Hayden, AL	875754	2012	Nov. 20, 2012
High School for Recording Arts St. Paul, MN	821295	2011	Sept. 7, 2012
High School for Recording Arts St. Paul, MN	866589	2012	Sept. 26, 2012
Kingsland School District 2137 Spring Valley, MN	875488	2012	Oct. 9, 2012

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Laona School District Laona, WI	864102	2012	Oct. 31, 2012
Mary Help of Christians Academy North Haledon, NJ	875672, 875751, 875752	2012	Nov. 5, 2012
Morgan County School District Decatur, AL	875443	2012	Nov. 26, 2012
New Life Child Development Center UPK1 Brooklyn, NY	875297, 875298	2012	Nov. 26, 2012
Northwest Passage 1 Frederic, WI	875674	2012	Nov. 26, 2012
Oxford Area Community Schools Oxford, MI	847501	2012	Nov. 27, 2012
Plymouth Educational Center Charter School Detroit, MI	875112	2012	Nov. 26, 2012
Polk County Public Library System Columbus, NC	875671	2012	Oct. 16, 2012
Proviso Township High School District 209 Forest Park, IL	875264	2012	Nov. 9, 2012
Riverside Christian School Trenton, FL	875142	2012	Dec. 3, 2012
Riverton School District 14 Riverton, IL	875180	2012	Nov. 28, 2012
St. Elizabeth A Seton – Bellmore Bellmore, NY	875588	2012	Nov. 23, 2012
Saint Francis Xavier Catholic School Baton Rouge, LA	875739, 875740, 875741, 875742, 875743	2012	Oct. 9, 2012
Victor Valley Christian School Victorville, CA	875134	2012	Dec. 3, 2012
Wayland Free Library Wayland, NY	868695	2012	Nov. 16, 2012
Wheatland Joint School District No. 1 Burlington, WI	875862	2012	Nov. 1, 2012
Wheelerville Union Free School Caroga Lake, NY	875320	2012	Oct. 22, 2012
Wisdom Academy Jacksonville, FL	875144	2012	Dec. 3, 2012
Worshipers House of Prayer Academy Miami, FL	875143	2012	Dec. 3, 2012

APPENDIX B

Requests Granted (Waivers Granted for Other Special Circumstances)

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Almont Community School District Almont, MI	844053	2012	Dec. 4, 2012
Ballard R-2 School District Butler, MO	852627	2012	Nov. 27, 2012
Chester Community Charter School Chester, PA	851059	2012	Nov. 7, 2012
Dufur School Dufur, OR	875714	2012	Nov. 16, 2012
Eastern Lancaster County Library New Holland, PA	875811	2012	Dec. 4, 2012
House of Good Shepherd School Utica, NY	875878	2012	Nov. 30, 2012
Iowa City Community School District Iowa City, IA	853144	2012	Nov. 5, 2012
Ketchikan Gateway Borough School District Ketchikan, AK	862694	2012	Oct. 31, 2012
Kitchell Memorial Library Morrisonville, IL	875903	2012	Oct. 25, 2012
Life A-New Preparatory Academy Grandview, MO	875951, 875953, 875988, 875989	2012	Oct. 9, 2012
Manhattan High School for Girls New York, NY	851063	2012	Nov. 30, 2012
Mark Twain Union Elementary School District Angels Camp, CA	874157, 874255, 874341, 874441, 874499, 874607, 874649	2012	Nov. 29, 2012
Middletown Public Library Middletown, OH	875853	2012	Nov. 19, 2012
New Mexico School for the Deaf Santa Fe, NM	835905, 860470	2012	Nov. 21, 2012
Port Isabel Public Library Port Isabel, TX	868312, 867702	2012	Oct. 17, 2012
St. Gerard School Lansing, MI	874517	2012	Dec. 4, 2012
Wakeeney Unified School District 208 Wakeeney, KS	828657	2012	Oct. 9, 2012
Washington County School District Plymouth, NC	867174, 870375	2012	Sept. 27, 2012

APPENDIX C

Request Granted Application Filed within the Funding Window

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Office of Enterprise Technology St. Paul, MN	421408	2004	Jun. 26, 2006

APPENDIX D

Requests Denied

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Albany County School District 1 Laramie, WY	876927	2012	Nov. 7, 2012
Baxter Community School District Baxter, IA	876887	2012	Oct. 31, 2012
Beach Cities Chabad Redondo Beach, CA	875306, 875308	2012	Nov. 26, 2012
Botetourt County School District Fincastle, VA	875700	2012	Nov. 30, 2012
Carlisle Public School District Carlisle, MA	876007	2012	Dec. 3, 2012
Chaya Mushka Children's House Sandy Springs, GA	875303, 875304	2012	Nov. 26, 2012
Cheder at the Ohel – New Campus Valley Stream, NY	875292, 875300, 875301	2012	Nov. 26, 2012
Community Library of the Shenango Valley Sharon, PA	877347	2012	Oct. 3, 2012
Crane R-III School District Crane, MO	876807	2012	Nov. 21, 2012
East Haven Public Schools East Haven, CT	832870, 876867	2012	Oct. 9, 2012
Elizabeth Titus Memorial Library Sullivan, IL	877527	2012	Oct. 9, 2012
Emek Hebrew Academy Sherman Oaks, CA	875140, 875361	2012	Nov. 26, 2012
Frankel Jewish Academy West Bloomfield, MI	876347	2012	Oct. 16, 2012
Hamilton School District R-2 Hamilton, MO	875872	2012	Oct. 19, 2012
Holy Spirit School Pequannock, NJ	875966	2012	Nov. 30, 2012
Idyllwild Arts Academy Idyllwild, CA	876428	2012	Oct. 9, 2012

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Ilion Free Public Library Ilion, NY	875807	2012	Oct. 24, 2012
Iroquois West School District 10 Gilman, IL	876627	2012	Nov. 8, 2012
Kenyon-Wanamingo School District 2172 Wanamingo, MN	877267	2012	Nov. 13, 2012
King-Chavez Academy of Excellence, Inc. San Diego, CA	877387	2012	Oct. 24, 2012
Lehighton Area Memorial Library Lehighton, PA	877367	2012	Oct. 24, 2012
Masconomet Regional School District Topsfield, MA	877247	2012	Nov. 9, 2012
Mequon-Thiensville School District Mequon, WI	877449	2011	Oct. 31, 2012
Muncy School District Muncy, PA	877327	2012	Oct. 15, 2012
Orcas Island School District 137 Eastsound, WA	877607	2012	Nov. 6, 2012
Oregon-Howell School District R3 Koshkonong, MO	876827	2012	Nov. 28, 2012
Poplar Creek Library District Streamwood, IL	875990	2012	Nov. 16, 2012
Sacred Hearts School Sun Prairie, WI	875896	2012	Nov. 5, 2012
Saint Francis School District Saint Francis, WI	875938, 875939, 875940, 875946	2012	Nov. 14, 2012
Schuylkill Haven Area School District Schuylkill Haven, PA	877187, 877188	2012	Nov. 2, 2012
Torah Academy – Lawrence Cedarhurst High School Cedarhurst, NY	875362, 875363	2012	Nov. 26, 2012
USA Outreach Valley Village, CA	875357, 875358	2012	Nov. 26, 2012
Yeshiva Rabbi Samson Raphael Hirsch School New York, NY	875350, 875359, 875360	2012	Nov. 26, 2012